

The meeting was held at 1:00 p.m. on Tuesday, January 12, 2010, at the Grant Sawyer Building, Room 4412, Las Vegas, Nevada.

COMMISSIONERS IN ATTENDANCE

Chairman	George F. Ogilvie III
Vice Chairman	Ace I. Robison
Commissioner	Marybel Batjer
Commissioner	Tom Collins
Commissioner	Duncan R. McCoy
Commissioner	Berlyn D. Miller
Commissioner	Lois Tarkanian

DEPUTY ATTORNEYS GENERAL

Senior Deputy Attorney General	Jennifer T. Crandell
Senior Deputy Attorney General	Ann C. Pongracz

COMMISSION STAFF IN ATTENDANCE

Executive Director	George M. Caan
Chief of Finance and Administration	Douglas N. Beatty
Assistant Director of Engineering and Operations	Robert Reese
Hydropower Manager	Craig N. Pyper
Manager, Energy Services Group	Gail A. Bates
Manager, Natural Resources Group	McClain L. Peterson
Natural Resource Analyst	Nicole Everett
Natural Resource Analyst	Esther Rojas
Natural Resource Analyst	Jason Thiriot
Senior Energy Accountant	Gail Benton
Energy Accountant	Kalora Snyder
Office Manager	Judy Atwood
Administrative Assistant IV	Brenda Haymore
Administrative Assistant II	Gina Goodman

OTHERS PRESENT; REPRESENTING

American Pacific Corporation	Jack Stonehocker
Clark County Water Reclamation District	Adam Werner
Clark County Water Reclamation District	Rick Montague
Diversified Utility Services/IBEW 396	Mike Raffety
IBEW LV 357	James Halsey
IBEW LV 357	Chris Wile
IBEW LV 382	Lamare Jones
IBEW Local 396	Charles Randall
IBEW Local 396	Jesse Newman
IBEW Local 396	Jeremy Newman
Martin-Harris Construction	Todd R. O'Bier
PAR Electrical Construction Company/IBEW 396	Matt Clogston
Parsons Constructors, Inc.	Andrew Contreras

**COLORADO RIVER COMMISSION
OF NEVADA
MEETING OF JANUARY 12, 2010**

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The Colorado River Commission meeting was called to order by Chairman Ogilvie at 1:04 p.m. followed by the pledge of allegiance.

A. Conformance to Open Meeting Law.

Executive Director George Caan confirmed that the meeting was in compliance with the Open Meeting Law.

B. Approval of minutes of the December 8, 2009 meeting.

Commissioner Batjer moved for approval of the minutes. The motion was approved by a unanimous vote.

C. Selection of Vice Chairman.

Chairman Ogilvie explained that NRS 538.111 provides that “at the first meeting of the commission in each calendar year, the commission shall elect the vice chairman for the ensuing calendar year”. He asked if there were any nominations.

Commissioner McCoy moved to nominate Ace Robison for Vice Chairman of the Colorado River Commission. The motion was approved by a unanimous vote.

D. Consideration of and possible action on award of Contract No. CRCPDP-205 for substation construction for the Clark County Water Reclamation District Electric Facilities Project.

Mr. Robert Reese, the Commission’s Assistant Director of Engineering and Operations, reminded the Commission that at its June 9, 2009 meeting, the Commission approved Contract No. CRCPDP-200 between the Commission and the Clark County Water Reclamation District (CCWRD) to provide for the design, purchase of materials, and construction of three CCWRD-owned substations and medium voltage distribution facilities to be located at the CCWRD Central Plant and Advanced Water Treatment facilities.

Contract No. CRCPDP-205 provides for substation construction of three 69/12.47-kV substations and associated 15-kV underground feeders required to comply with the Commission’s obligations under Contract No. CRCPDP-200.

On December 1, 2009 Contract No. CRCPDP-205 was released for bid. By bid closing on December 22, 2009, the Commission had received eight bids. The bid amounts are shown below.

BIDDER NAME	TOTAL BID
M & H Enterprises Inc., dba Martin-Harris Construction	\$4,706,975.00
TAB Contractors, Inc.	\$4,748,648.00
PAR Electrical Contractor’s, Inc.	\$5,045,574.09

Hampton Tedder Electric, Inc.	\$5,757,703.57
System 3, Inc.	\$5,937,000.00
Wasatch Electric, A Division of Dynalectric	\$5,974,427.00
Diversified Utility Services, Inc.	\$6,107,883.00
Michels Power	Incomplete

Mr. Reese said the Commission's staff and engineers evaluated the bids. The evaluation involved a two-step process. The first step included a review of each bid to ensure compliance with the requirements of the technical specifications and contract documents. The second step involved an evaluation of each proposal to consider factors such as price, schedule, quality and service.

Another part of the evaluation is carried out in accordance with NRS 338.147 in which bidder preference is given to a bidder who is a Nevada licensed contractor who provides proof of payment of taxes to the State of Nevada and a certificate of eligibility from the State Contractors' Board. The monetary amount of the bid preference shall be evaluated as five percent of the Bidder's Bid. The bid from M & H Enterprises Inc., dba Martin-Harris Construction is eligible for bid preference.

The evaluation confirmed the bid from M & H Enterprises Inc., dba Martin-Harris Construction, was the lowest responsive bid. Staff therefore recommended award of Contract No. CRCPDP-205 for substation construction for the Clark County Water Reclamation District Electric Facilities Project to M & H Enterprises Inc., dba Martin-Harris Construction. Staff is requesting contract authority of \$5,177,672.50 which includes a 10 percent contingency for quantity adjustments and change orders.

Chairman Ogilvie asked if there were any bid protests submitted.

Mr. Reese said that no protests had been submitted.

Commissioner Collins asked for clarification that Contract No. CRCPDP-205 will be between whoever the contract is awarded to and the Commission—not the Clark County Water Reclamation District.

Mr. Caan explained that this contract will be between the Commission and a contractor. There is a contract between the Commission and the CCWRD that authorizes and provides funding for the Commission to undertake this project on CCWRD's behalf.

For the record, Commissioner Collins disclosed that he also sits on the board of the CCWRD.

Chairman Ogilvie asked if there were any further questions from commissioners on this matter. Hearing none, he asked if any member of the public would like to be heard.

Jesse Newman, representing IBEW 396 at 3520 Boulder Highway, Las Vegas, Nevada 89121, said he had some concerns with this contract. He said this project should fall under the Project

Labor Agreement (PLA). He also questioned whether the proper licenses were obtained by all of the bidders. He asked that this item be postponed to allow investigation of those concerns.

Chairman Ogilvie asked if Mr. Newman had submitted these concerns in writing to the Commission.

Mr. Newman said he had not.

Commissioner Tarkanian asked if there was problem in delaying the award of this contract to the next meeting.

Mr. Reese said that the schedule for this project is time sensitive. Staff is expediting the work to accommodate project obligations the CCWRD must meet or risk invoking liquidated damages clauses in other ongoing construction contracts.

Mr. Newman said he had spoken to the contractors they represent and he has been promised that if the item is tabled and then placed under a PLA, they would be ready for bid within two weeks and ready to move forward.

Chairman Ogilvie asked if a PLA was considered for this project.

Mr. Reese said at the beginning of the project our client, the CCWRD, was asked if they worked under a PLA and they said they did not. On past projects with entities other than CCWRD, the Commission has entered into a PLA at our customer's request. Mr. Reese further responded to the question of appropriate licensing, stating that the documentation submitted by Martin-Harris shows that it does hold the appropriate licenses required by the contract.

Chairman Ogilvie asked for a legal opinion about the need for a PLA for this project.

Ann Pongracz, Senior Deputy Attorney General, said that the PLA does not apply to this contract because it is not within the scope of the requirements from the CCWRD.

Mr. Caan explained that it has been the Commission's policy since it began construction projects over the past decade, to abide by the policies of our customers regarding whether a PLA should be utilized on a specific project. He noted that the Commission does not do projects for itself but for others, and under their funding and guidelines. For example, the Commission works under a PLA on projects for the Southern Nevada Water Authority (SNWA), at the direction of the SNWA. The CCWRD, however, does not require a PLA. In this case the Commission followed the CCWRD's guidelines and did not undertake a PLA for this project. The Commission has never adopted a policy for or against a PLA—we simply follow the desires of our customers.

Ms. Pongracz pointed out that the contract the Commission approved between the CCWRD and the Commission for this project does not authorize or require the use of a PLA.

Commissioner Collins asked if there is a signed PLA by the Commission.

Mr. Reese explained that for projects requiring a PLA, it is administered by Parsons Constructors on behalf of the Colorado River Commission. A PLA is project specific and is valid only for the duration of a project.

Commissioner Collins said he heard that the CCWRD project was not a PLA project and then it was going to be and then not again, and questioned why these changes occurred.

Mr. Reese said the original discussions with CCWRD indicated that a PLA would not be used. The PLA issue arose after the bid documents were released. Changing the bid documents to include a PLA would have required the issuance of new bid documents including PLA documentation and requirements, and would have required starting the bidding process all over. That would have delayed the project at least a month behind the schedule required for the timely completion of this project.

Regarding the assertion that bidders did not have the appropriate licenses, Commissioner Batjer asked for clarification of the licenses required for this project.

Mr. Reese explained that Martin-Harris Construction's bid included copies of all the licenses necessary for this project including a full A license for general engineering, and an A-17 license, for the electrical work for the subcontractor.

Chairman Ogilvie asked if there were any further comments. There were none.

Commissioner Robison moved to approve award of the contract to M & H Enterprises, Inc., dba Martin-Harris Construction. The motion was seconded by Commissioner McCoy.

Commissioner Collins said he would not support the motion. He felt there was a lack of advance presentation and some confusion.

Commissioner Tarkanian questioned the necessity of rushing this item through just to meet an aggressive schedule. She said she would like more time to investigate the concerns that were raised. She felt that an item brought before a governing body for consideration should allow for a delay if the governing body wants more time for investigation.

Commissioner Robison asked what the costs would be for delaying this project.

Adam Werner, Project Manager for the CCWRD, said that there are two ongoing projects that require the March 2010 substation energization. The cost for not meeting that deadline is between \$10,000 to \$12,000 per day.

Commissioner Tarkanian reiterated her concern regarding no time built into a project to allow for delay if it is deemed necessary.

Chairman Ogilvie said he appreciated the concerns of Commissioners Collins and Tarkanian, and the comments from Mr. Newman. In the future he urged Mr. Newman to submit in writing

in advance of the meeting concerns he may have regarding problems with bids so they can be fully investigated.

Chairman Ogilvie asked if staff is recommending an award of the contract to Martin-Harris Construction, and if the absence of a PLA is in compliance with the law and the contract between the Commission and the CCWRD.

Ms. Pongracz said that was correct.

Chairman Ogilvie stated that in his experience if there was an irregularity regarding the licenses the second or third lowest bidders would have filed a protest regarding that irregularity. Was there a protest filed?

Mr. Reese said there were no protests filed.

Chairman Ogilvie said he felt comfortable supporting the motion.

Commissioner Collins asked if the purchasing contracts that were approved by the Commission in December were in support of this construction project.

Mr. Reese said they were in support of this project. He briefly reviewed the project schedule and material delivery dates. He pointed out that the Commission is taking this project over from another contractor and that some of the material purchased by the other contractor is onsite. The material to be procured by the Commission has been ordered.

Commissioner Tarkanian thanked everyone for the explanations regarding the PLA and said she more fully understood now that the Commission does not have a policy regarding a PLA but follows the funding entity's instructions. She thanked the Chairman for pointing out that staff would have had time to investigate concerns and there would have been no need for an abeyance of the item, if a protest had been correctly filed in advance of the meeting.

Mr. Caan said he felt it would be appropriate to provide the Commission with a briefing on the process the staff follows on public works projects. He said that such a briefing would provide the Commission members with the opportunity to comment and provide feedback.

Chairman Ogilvie asked that the motion be renewed.

Commissioner Robison moved to approve award of the contract to M & H Enterprises, Inc. dba Martin-Harris Construction. The motion was seconded by Commissioner McCoy and approved by the following vote:

Those voting yes:
Chairman Ogilvie
Vice Chairman Robison
Commissioner Batjer
Commissioner McCoy

Those voting no:
Commissioner Collins

Commissioner Miller
Commissioner Tarkanian

E. Consideration of and possible action to approve the filing of an Amicus Brief in support of the Southern Nevada Water Authority's appeal to the Nevada Supreme Court of the Seventh Judicial District Court's Order Vacating and Remanding the State Engineer's Ruling which partially granted SNWA's groundwater applications with respect to Cave Valley, Delmar Valley and Dry Lake Valley.

Jennifer Crandell, Senior Deputy Attorney General, said that as the Commission is aware, approximately 90% of the water supply of southern Nevada comes from the Colorado River, even as the Colorado River continues to struggle with a 9-year drought. The Commission has recognized that the acquisition, development and sustainable use of additional water supplies are of critical importance to the public welfare of the citizens of the Las Vegas Valley and to the continued economic prosperity of Clark County.

In its efforts to supplement southern Nevada's water supply, the Southern Nevada Water Authority (SNWA) filed applications with the State Engineer to obtain approximately 34,500 acre-feet per year (afy) of unused groundwater from the Cave, Dry Lake and Delmar Valleys in eastern Nevada. The Nevada State Engineer held a two week hearing in February 2008 and issued a ruling which granted 18,755 afy of water rights to SNWA from these basins. Petitioners challenged the State Engineer's decision, and on October 19, 2009, Judge Norman Robison vacated the State Engineer's Ruling, holding that the State Engineer acted arbitrarily, capriciously and oppressively in his conclusions pertaining to perennial yields and therefore abused his discretion. The State Engineer and the SNWA are now appealing Judge Robison's decision to the Nevada Supreme Court.

As Nevada's statutory trustee of all of Nevada's share of water in the Colorado River, the Commission has a vital interest in ensuring that this resource is utilized in an effective and efficient manner. The development of in-state non-Colorado River water resources is a necessary component of the future development of interstate agreements to potentially secure additional Colorado River resources for Nevada. Commission staff believes that implementation of these in-state water resource projects is critical to the future of the State, both in terms of the drought protection and additional water supply that will be provided to southern Nevada. Filing an Amicus Brief with the Supreme Court of Nevada will inform that body of the nature of the drought, the Law of the River, and this Agency's support of these in-state water resource projects.

Staff recommended approval of filing an Amicus Brief in support of the SNWA in its efforts to obtain groundwater in central Nevada as a supplemental water supply to southern Nevada.

Chairman Ogilvie asked the cost involved and the deadline for filing.

Ms. Crandell said she would be doing the work on the brief so there is no outside cost involved. The filing deadline is February 10, 2010.

Chairman Ogilvie asked if there were other entities filing amicus briefs.

Ms. Crandell said she had not heard of any.

Commissioner Robison asked if the member entities of the SNWA are eligible to file an amicus brief.

Ms. Crandell said they certainly should be eligible but she had not heard if anyone had filed.

Commissioner Batjer asked if the Commission will have an opportunity to review the brief before it is filed with the court.

Ms. Crandell said she would be happy to circulate a copy to the Commissioners for review.

Commissioner Robison read the following statement into the record:

“With Judge Robison and many other residents of eastern and rural Nevada, I have been and continue to be concerned about the economic and social effects that the withdrawal of huge amounts of water from rural areas of this state may have on the fabric of rural Nevada.

For this reason I have, over the years both on and off the record, encouraged the SNWA to carefully include planning for the future economic and social wellbeing of rural Nevada communities that will or may be affected by its withdrawal plans in its overall water management planning. Such overall planning is not just prudent, it is right. I think SNWA is trying to do that and has mended some of its previous ways in approaching, doing business with, and generally showing respect for the needs and concerns of the rural counties and rural communities including affected rural communities in Clark County. There is, however, still much that they can and should do and I urge them to do it.

That being said, I am in support of this action. We as a state must relieve the near total dependency of the Las Vegas metropolitan areas on the waters of the Colorado River by finding and responsibly utilizing in-state resources such as those involved in Judge Robison’s order. The continued economic well being of the entire state depends on it. This is not just a Las Vegas issue, it is a state issue. This very fact, however, requires, even demands, that the metropolitan areas including the water agencies, businesses and residents of the metropolitan areas, continue to be increasingly more responsible in their water usage and respectful of those in rural Nevada who are making sacrifices that cannot now be measured.”

Commissioner Robison moved to accept staff’s recommendation. The motion was seconded by Commissioner Batjer and approved by a unanimous vote.

F. Status update on the hydrologic conditions, drought, and climate of the Colorado River Basin and Nevada’s consumptive use of Colorado River water, and other developments on the Colorado River.

Nicole Everett, Natural Resource Analyst for the Commission, provided a report on the following:

- Storage Conditions on the Colorado River
- Unregulated Inflow into Lake Powell
- Precipitation in the Colorado River Basin
- Lake Powell Elevation Projections
- Lake Mead Elevation Projections
- Hoover Dam Rating and Lake Mead Elevations
- Monthly Temperature Deviations
- Monthly Precipitation in the Colorado River Basin
- Seasonal Precipitation
- Arkansas, Colorado and Rio Grande Basin Mountain Snowpack
- Upper Colorado River Basin Snotel Tracking
- Inflow in the Colorado River
- Drought Conditions in the West
- Seasonal Drought Outlook
- Record of Precipitation—Las Vegas Valley
- Water Use in Southern Nevada

A copy of the report is attached and made a part of the minutes. (See Attachment A.)

Commissioner Robison recalled a discussion from a previous meeting regarding the lake levels effect on power generation capacity and asked what is the status on power generation capacity at Hoover Dam since the drought is ongoing and it appears likely that lake levels will continue to drop.

Mr. Caan reminded the Commission that the 1080 foot lake level is the design limit for the generators at their lowest operational capabilities. There is a meeting scheduled with the power plant operators at Hoover Dam to discuss their projected plans. They will hopefully outline their anticipated operating parameters that will be used as the lake level continues to fall. Staff will continue to monitor the situation. Another concern is the obligation to pay for dam operations even if the generators are turned off. Meetings with the Bureau of Reclamation will take place to determine what those costs will be and what they cover.

Commissioner Robison asked what that means to our customers and to our bottom line if the generators cease to operate or generation is reduced.

Mr. Caan said that it will cost our customers more because they would need to buy replacement power and continue to pay for dam operations. The cost will be determined by the percentage of hydropower that makes up each user’s portfolio. Each entity is very aware of the impacts to its system.

Chairman Ogilvie asked if there is a notification provision in the contracts with our power customers that provides for advance warning of the shutdown of the generators.

Mr. Caan said there are no notice provisions in the contracts, however, master schedules are required, forecasts are made and load information is provided to keep everyone up to date. There is a revenue insufficiency fund that everyone contributes to in case there is insufficient generation. That will not cover the full impact. It is meant to cover insufficiencies in a low-operating year, not a no-operating year.

Commissioner Robison asked that a short briefing on this matter be provided at each Commission meeting.

Mr. Caan asked if the Commission wanted to include potential impacts in the briefing.

Commissioner Robison said he would.

Commissioner Miller said it was his understanding that a program was in place to renovate the generators to allow for operation at a lower water level. He asked if staff was aware of the status of that program.

Mr. Caan said the program to install “low-head turbine runners” has begun which allows the generators to operate more efficiently at low lake levels. That is a project the Hoover customers agreed to fund in order to meet the challenges of the low lake level.

Commissioner Miller asked if this installation will change the lake level at which the generators will stop operating.

Mr. Caan explained that the generators will still cease operating at 1080 feet but will operate more efficiently with more power generated per acre-foot of water at lower lake levels until that target level is reached.

Regarding legislation relating to Hoover power, Mr. Caan reported that two bills were introduced in December, one in the Senate and one in the House. The Senate bill was introduced by Senator Harry Reid with three co-sponsors and the House bill was introduced by Congresswoman Grace Napolitano with 43 co-sponsors. The bills have been assigned to committees. Hearings are expected in the House in mid-February and in the Senate in March.

G. Comments and questions from the public and discussion. (No action may be taken on a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action will be taken.)

Chairman Ogilvie asked if there were any comments or questions from the public. There were none.

H. Comments and questions from the Commission members.

Chairman Ogilvie asked if there were any comments or questions from the Commission members.

Commissioner Collins asked that a further discussion be held regarding contract licensing requirements.

Chairman Ogilvie asked that Mr. Caan include Commissioner Collins request in the presentation mentioned earlier in the meeting regarding the process a public works project requires.

Mr. Caan assured him the information would be included in the presentation.

I. Selection of the next possible meeting date.

The next meeting was tentatively scheduled for 1:00 p.m. on February 9, 2010 at the Grant Sawyer Building.

J. Adjournment.

The meeting adjourned at 2:05 p.m.

George M. Caan, Executive Director

APPROVED:

George F. Ogilvie, Chairman